

Duane A. Admire, Federal Bar No. 173699CA
ADMIRE & ASSOCIATES
12880 Carmel Country Road
Suite D110
San Diego, CA 92130
Tel. (619) 316-6658
duaneadmire@outlook.com

Attorneys for Plaintiff, Vincent Eric Roach

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Vincent Eric Roach,

Plaintiff,

vs.

Tim Fortier, an individual; Catherine Irene
Fortier, an individual; Folio Café LLC,

Defendants.

Case No.:

COMPLAINT FOR DAMAGES FOR
BREACH OF CONTRACT, FRAUD, AND
EMBEZZLEMENT

I. Jurisdiction/Grounds for Filing in Federal Court

Pursuant to 28 U.S. Code 1332, the District Court has jurisdiction over all civil actions where the amount in controversy exceeds \$75,000 and is between citizens of different states. Here, this is a civil action for breach of contract and fraud. The amount in controversy exceeds \$75,000.00.

1 The Plaintiff is a citizen of Utah, and all three defendants are citizens of Missouri, thus the
2 requirements of 28 U.S. Code 1332 are met.
3

4 5 **II. Plaintiff**

6 Plaintiff, Vincent Eric Roach, resides at 23741 East Mountain Valley Way, Sandy, Utah
7 84092.
8

9 10 **III. Defendants**

11 Defendant, Tim Fortier resides at 4468 SW Raintree Shore Drive, Lees Summit MO 64082-
12 4884.

13 Defendant, Catherine Irene Fortier resides at 4468 SW Raintree Shore Drive, Lees Summit
14 MO 64082-4884.

15 Defendant, Folio Café LLC, is located at 13001 Manchester Rd, Des Peres, Missouri 63131.
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17 18 **IV. Complaint**

19 **A) FIRST CAUSE OF ACTION: BREACH OF CONTRACT – AGAINST TIM FORTIER** 20 **AND FOLIO CAFÉ LLC**

21 Plaintiff entered into a contract with defendants, Tim Fortier and Folio Café LLC, on 20
22 October 2014. (See **Exhibit A: The Contract**). Tim Fortier was the sole managing member
23 and was 100% owner of Folio Café LLC. The contract specified that Plaintiff would pay
24 installments totaling \$100,000 for 66% of the ownership interest in Folio Café LLC.
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1 Plaintiff performed all his contractual obligations, including paying \$100,000 in full, on
2 22 February 2017 to defendant Tim Fortier. However, Defendants have failed to perform the
3 following contractual obligations as outlined in their agreement:
4

- 5 (1) Convey a 66% ownership interest in Folio Café LLC to Plaintiff;
- 6 (2) Give Plaintiff equal and joint control over the LLC's checking accounts and the
7 money deposited therein;
- 8 (3) Deposit growth in excess of LLC's current income into LLC capital account;
- 9 (4) Pay monthly income to Plaintiff of \$8,100;
- 10 (5) Give Plaintiff the LLC's monthly financial statements;
- 11 (6) Pay Plaintiff several fines of \$250 each, which are owed for missing deadlines;
- 12 (7) Cease transacting in related business or acquiring new clients outside of Folio Café
13 LLC.
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17 **B) SECOND CAUSE OF ACTION: FRAUD – AGAINST DEFENDANTS TIM FORTIER**
18 **AND CATHERINE IRENE FORTIER**

19 (1) In the contract dated 20 October 2014 between the defendants and the Plaintiff, the
20 following representations were made: Plaintiff would pay Tim Fortier \$100,000 and in exchange,
21 Tim Fortier would: Convey a 66% ownership interest in Folio Café LLC to Plaintiff; Tim
22 Fortier would give Plaintiff equal and joint control over the LLC's checking accounts and the
23 money deposited therein; Tim Fortier would deposit growth in excess of LLC's current income
24 into LLC capital account; Tim Fortier would pay monthly income to Plaintiff of \$8,100; Tim
25 Fortier would give Plaintiff the LLC's monthly financial statements; Tim Fortier would pay
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1 Plaintiff several fines of \$250 each, which are owed for missing deadlines; cease transacting in
2 related business or acquiring new clients outside of Folio Café LLC.

3 (2) These Representations by Defendant Tim Fortier were false because at the time the
4 representations were made, Tim Fortier intended to collect \$100,000 from the Plaintiff, but he
5 never intended to convey ownership to Plaintiff, pay income to Plaintiff, share financial
6 statements with Plaintiff, or cease doing related business outside of Folio Café LLC.
7 Furthermore, Tim Fortier purposefully diverted clients and business away from Folio Café LLC
8 and directed them to both his wife, Catherine Fortier, (who was aware of the contract) and to
9 other entities he has created since the formation of Folio Café LLC, behavior that constitutes
10 fiduciary misconduct, conflict of interest and contractual malfeasance.
11

12 (3) Representations were material because the basis of the bargain between Plaintiff and
13 defendant Tim Fortier was that Plaintiff would pay \$100,000 in exchange for 66% ownership of
14 the LLC, monthly income, rights to financial statements, power over bank accounts, and doing
15 business exclusively for the benefit of the LLC.
16

17 (4) Defendants Tim Fortier and Catherine Woods Fortier had knowledge of the falsity
18 because it was Tim Fortier who crafted the representations when he wrote up the contract, sought
19 the Plaintiff's signature, and collected the Plaintiff's payments. Defendant Tim Fortier is
20 married to Catherine Fortier, and they both work in the financial sector, and have shared
21 knowledge of these representations with each other in order to divert business from the Plaintiff
22 and keep the business in their family.
23

24 (5) Defendants' intent that the representations should be acted upon by the hearer-
25 Plaintiff is evidenced in the language of the contract document, the manner the business
26 opportunity was presented to the Plaintiff, and their communications during the Plaintiff's
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1 installment payments. Their written assurances to the Plaintiff led the Plaintiff to believe the
2 defendants were performing and fulfilling their obligations when in fact they were not.

3 (6) Plaintiff's ignorance of the falsity is evident by his good faith payments to defendants
4 over a period of months (totaling \$100,000) and is seen in the sincerity of his email
5 communications and inquiries regarding the status of defendants' progress and performance.
6

7 (7) Plaintiff's reliance on the truth of the representation is evidenced by his good faith
8 payment of \$100,000 to defendants.

9 (8) Plaintiff has a right to rely on the representations because he lacked knowledge of
10 defendant's scheme to abscond with his \$100,000 and because Plaintiff was in privity of contract
11 with defendants and had a reasonable expectation defendants would perform their contractual
12 duties after fully performing his duties.
13

14 (9) Plaintiff's injuries were actually caused by the defendants because but for the
15 defendants' acceptance of the \$100,000 the Plaintiff would not have suffered the injury. The
16 injuries were proximately caused by the defendants because it was foreseeable that accepting the
17 Plaintiff's \$100,000 in payments without conferring any of the benefits promised would result in
18 injury to the Plaintiff.
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22 C) THIRD CAUSE OF ACTION: EMBEZZLEMENT – AGAINST DEFENDANTS
23 TIM FORTIER AND CATHERINE WOODS FORTIER

24 Embezzlement requires the fraudulent conversion of the property of another who is in lawful
25 possession of said property.

26 (1) The elements of fraud are satisfied above in SECOND CAUSE OF ACTION.
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1 (2) The conversion of Plaintiff's property is evident in the LLC bank statements which show
2 defendants withdrawing all funds deposited into the accounts without the consent of the
3 Plaintiff. Additionally, defendants have created new entities to redirect client funds away from
4 Folio Café LLC, as well as intellectual property, and ownership, without the knowledge or
5 consent of the Plaintiff. The entities include but are not limited to: Neweraofinvesting.com;
6 Fortier Financial LLC; Alphachartist; QuantAdvisor; and others.
7

8 (3) The property in this matter consists of the LLC's client payments that are received and
9 deposited into the LLC bank accounts, as well as proprietary investment materials and
10 intellectual property belonging to Folio Café LLC and Plaintiff.
11

12 (4) Said property belongs to another person other than defendants because 66% is the
13 Plaintiff's, who is the rightful 66% owner of Folio Cafe LLC.
14

15 (5) Defendant Tim Fortier is the original organizer and 33% owner of Folio Cafe LLC,
16 therefore he is in lawful possession of said money while it remains in the LLC bank accounts.
17 However, once Defendant Tim Fortier moves the money out of the bank accounts and into new
18 bank accounts and new entities with the help of his wife, Defendant Catherine Irene Fortier, the
19 possession becomes unlawful.
20

21 **V. Prayer for Relief**

22 Plaintiff seeks enforcement of the contract between Plaintiff, Tim Fortier, and Folio Café
23 LLC, and money damages from all three defendants through joint and several liability to be
24 determined at trial.
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1 **VI. Money Damages**

2 Plaintiff seeks general damages in an amount to be determined at trial; punitive damages
3 against Defendants Time Fortier and Catherine Woods Fortier as to the fraud and embezzlement
4 causes of action.
5

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7 **VII. Continuation of Wrongs**

8 Plaintiff maintains that all the wrongs alleged in this complaint are continuing to occur at the
9 present time.
10

11
12 Dated this 15th day of November, 2017
13

14
15 /s/
16 Duane Admire (Counsel for Plaintiff)
17 Federal Bar No. 173699CA
18 ADMIRE & ASSOCIATES
19 12880 Carmel Country Road
20 Suite D110
21 San Diego, CA 92130
22 Tel. (619) 316-6658
23 duaneadmire@outlook.com
24
25
26
27
28

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9 Attorneys for Plaintiff, Vincent Eric Roach

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17 Tim Fortier, an individual; Catherine Irene

18 Fortier, an individual; Folio Café LLC,

19 Defendants.
20
21

) Case No.:

) EXHIBIT A: THE CONTRACT

LETTER OF UNDERSTANDING

By and Between
Tim Fortier & Eric Roach

This Letter of Understanding ("LOI") is entered into between Tim Fortier, the sole Managing Member of Folio Café, LLC, a Missouri Limited Liability Company dba Portfolio Café, ("PFC", and the "Company") and Eric Roach, ("Investor") an individual whose address is 17 Nurmi Drive, Ft. Lauderdale FL, and collectively referred to as the "Parties".

NOW, THEREFORE, the parties agree to work together in the following manner.

WHEREAS, the Investor desires to invest the sum of \$100,000 for an ownership interest into (PFC); and

WHEREAS, PFC is willing to accept Investor capital under the following terms and conditions;

1. Investor will invest a total of \$100,000 to be deposited to a Folio Café bank account in increments of \$25,000 with the first deposit occurring by no later than October 16th, 2015. Each future deposit will be released upon the accomplishment of certain tasks agreed upon by the Parties.
2. Mr. Fortier will be continue to draw 100% of current earned income and a draw of \$4000 per month from Investor's capital until such time the combined total reaches or exceeds \$8,100. Mr. Fortier will continue to fund out of company revenue the current level of expenses currently being expended. It is too understood that the company will undertake "new" expenses as per the new company plan. The portion of growth from the date of execution of this agreement exceeding the current level of income, will accrue to the capital account.
3. It is agreed that apart from consulting activities approved by the company, all other outside business activities shall cease by October 16th. This is inclusive of trading for one's personal account, but does not prohibit investing ones account via the café models as would an ordinary investor. Goal here is of a 100% total focus on the LLC by Mr. Fortier.
4. When the income triples from today, from 48K per year to 144K per year annualized, Mr. Roach too will then be entitled to a monthly income equal to that of Mr. Fortiers of 8,100 per month. After that point, capital allocations shall likely be divided consistent with the current ownership stakes, consistent with sufficient holdbacks for healthy growth.
5. The roles will be defined with Mr. Roach providing strategic guidance and management assistance and Mr. Fortier will be responsible day-to-day operations and the completion of most of the project tasks.
6. The Articles of Organization shall be amended with the Missouri Secretary of States Office to reflect the change in membership to reflect

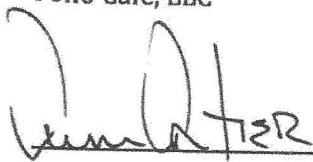
the Investor with a 66% membership interest and Mr. Fortier with a 34% membership interest. Mr. Roach will serve as the Managing Partner with Mr. Fortier reporting to Mr. Roach.

7. The Parties agree to adopt a new Operating Agreement for Folio Café LLC that properly reflects the member's membership interest and roles, responsibilities, and issues pertaining to general governance of the Limited Liability Company within thirty (30) days of this LOI.
8. The Parties agree that the designated bank account of the Company shall be account # 3550 0432 1948 held at Bank of America with the Parties sharing equal and joint access.

SIGNATURE PAGE TO FOLLOW



BY: Tim Fortier
Managing Partner,
Folio Café, LLC

_____

Date: 10-15-14

BY: Eric Roach

_____

Date: 10/20/14

